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Attorneys for Complainant
7

8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke
Probation Against:

Case No. 3985

12 **FALAH H. KHALIFA**
13 1133 Celis Street
14 San Fernando, CA 91340

PETITION TO REVOKE PROBATION

15 Original Pharmacist License No. RPH 31694

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On or about December 19, 1977, the Board of Pharmacy issued Original Pharmacist
24 License Number RPH 31694 to Falah H. Khalifa (Respondent). The Original Pharmacist License
25 was in effect at all times relevant to the charges brought herein and will expire on April 30, 2012,
26 unless renewed.

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3. In a disciplinary action entitled "In the Matter of Accusation Against Falah H. Khalifa," Case No. 2288, the Board of Pharmacy, issued a decision, effective February 26, 2003, in which Respondent's Original Pharmacist License was revoked. However, the revocation was stayed and Respondent's Original Pharmacist License was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code section 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code section 11000 et seq.].

6. Section 4300 of the Code states, in pertinent part:

“(a) Every license issued may be suspended or revoked.

“(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

...

"(4) Revoking his or her license.

• • •

"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of

1 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
2 Civil Procedure."

3 7. Section 118, subdivision (b), of the Code provides that the
4 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
5 jurisdiction to proceed with a disciplinary action during the period within which the license may
6 be renewed, restored, reissued or reinstated.

7 **CAUSE TO REVOKE PROBATION**

8 (Failure to Maintain Employment as Pharmacist)

9 8. At all times after the effective date (February 26, 2003) of the Decision and Order
10 imposing probation on Respondent's Original Pharmacist License No. RPH 31694, Condition 14
11 of that Order required, in pertinent part:

12 "Tolling of Probation. Respondent must notify the Board in writing within 10 days
13 of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such
14 periods of time shall not apply to the reduction of the probation period. It is a violation of
15 probation for Respondent's probation to remain tolled pursuant to the provisions of this condition
16 for a period exceeding three years.

17 "Cessation of practice" means any period of time exceeding 30 days in which Respondent is
18 not engaged in the practice of pharmacy as defined in Section 4052 of the Business and
19 professions Code."

20 9. Respondent's probation is subject to revocation because he failed to comply with
21 Condition 14 of probation referenced above, in that Respondent failed to secure employment as a
22 pharmacist at any point after February 26, 2003, the effective date of the above-refernced
23 Decision and Order.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Pharmacy issue a decision:

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1 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2288
2 and imposing the disciplinary order that was stayed, thereby revoking Original Pharmacist
3 License No. RPH 31694 issued to Falah H. Khalifa;

4 2. Taking such other and further action as deemed necessary and proper.

7 DATED: _____

11/9/11



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

12 LA2011600493
13 pet revoke prob.rtf

Exhibit A

Decision and Order

Board of Pharmacy Case No. 2288

1 BILL LOCKYER, Attorney General
of the State of California
2 GREGORY J. SALUTE, State Bar No. 164015
Deputy Attorney General
3 California Department of Justice,
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2520
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2288

11 FALAH H. KHALIFA,
dba CALIFA PHARMACY
12 1133 Celis Street
San Fernando, CA 91340
13 FALAH H. KHALIFA, Owner
and Pharmacist-in-Charge

OAH No. L2002030117

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO ALL
RESPONDENTS**

14 Original Pharmacy Permit No. PHY 30196

15 and

16 FALAH H. KHALIFA
17 1133 Celis Street
San Fernando, CA 91340

18 Original Pharmacist License No. RPH 31694

19 Respondents.
20
21

22 In the interest of a prompt and speedy settlement of this matter, consistent with the public
23 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
24 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
25 be submitted to the Board for approval and adoption as the final disposition of the Accusation
26 with respect to Respondents FALAH H. KHALIFA, dba CALIFA PHARMACY and FALAH H.
27 KHALIFA ("Respondents").

28 ///

1 PARTIES

2 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
3 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
4 by Bill Lockyer, Attorney General of the State of California, by Gregory J. Salute, Deputy
5 Attorney General.

6 2. Respondents are represented in this proceeding by attorney Ronald S.
7 Marks, Esq. whose address is 6320 Canoga Avenue, Woodland Hills, CA 91367.

8 3. On or about September 1, 1983, the Board of Pharmacy issued Original
9 Pharmacy Permit Number PHY 30196 to FALAH H. KHALIFA, Individual License Owner, to
10 do business as CALIFA PHARMACY ("Respondent CALIFA PHARMACY"). The Original
11 Pharmacy Permit Number was in full force and effect at all times relevant to the charges brought
12 herein and will expire on August 1, 2003, unless renewed.

13 4. On or about December 19, 1977, the Board of Pharmacy issued Original
14 Pharmacist License Number RPH 31694 to FALAH H. KHALIFA ("Respondent KHALIFA").
15 The Original Pharmacist License Number was in full force and effect at all times relevant to the
16 charges brought herein and will expire on April 30, 2004, unless renewed.

17 JURISDICTION

18 5. Accusation No. 2288 was filed before the Board of Pharmacy (Board),
19 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
20 and all other statutorily required documents were properly served on Respondents on January 23,
21 2002. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of
22 Accusation No. 2288 is attached as exhibit A and incorporated herein by reference.

23 ADVISEMENT AND WAIVERS

24 6. Respondents have carefully read, fully discussed with counsel, and
25 understand the charges and allegations in Accusation No. 2288. Respondents have also carefully
26 read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and
27 Disciplinary Order.

28 7. Respondents are fully aware of their legal rights in this matter, including

1 the right to a hearing on the charges and allegations in the Accusation; the right to be represented
2 by counsel at their own expense; the right to confront and cross-examine the witnesses against
3 them; the right to present evidence and to testify on their own behalf; the right to the issuance of
4 subpoenas to compel the attendance of witnesses and the production of documents; the right to
5 reconsideration and court review of an adverse decision; and all other rights accorded by the
6 California Administrative Procedure Act and other applicable laws.

7 8. Respondents voluntarily, knowingly, and intelligently waive and give up
8 each and every right set forth above.

9 CULPABILITY

10 9. Respondents understand that although they are not making personal
11 admissions to the alleged violations of the items of the Accusation #2288, their signature and
12 agreement herein will allow the Board or its duly authorized representative to deem the
13 violations of the Accusation affirmed and sustained as if true and proven for the purpose of
14 imposing discipline or civil penalties. Respondents further understand that the sustained
15 violations of the Accusation herein may be considered for any future administrative or
16 disciplinary matter by the Board.

17 10. Respondents agree that their license(s) and/or pharmacy permit(s) are
18 subject to discipline and they agree to be bound by the Board of Pharmacy (Board) 's imposition
19 of discipline as set forth in the Disciplinary Order below.

20 CIRCUMSTANCES IN MITIGATION

21 11. Respondents have never been the subject of any disciplinary action. They
22 are admitting responsibility at an early stage in the proceedings.

23 CONTINGENCY

24 12. This stipulation shall be subject to approval by the Board of Pharmacy.
25 Respondents understand and agree that counsel for Complainant and the staff of the Board of
26 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
27 without notice to or participation by Respondents or their counsel. By signing the stipulation,
28 Respondents understand and agree that they may not withdraw their agreement or seek to rescind

1 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
2 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall
3 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
4 between the parties, and the Board shall not be disqualified from further action by having
5 considered this matter.

6 13. The parties understand and agree that facsimile copies of this Stipulated
7 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
8 force and effect as the originals.

9 14. In consideration of the foregoing admissions and stipulations, the parties
10 agree that the Board may, without further notice or formal proceeding, issue and enter the
11 following Disciplinary Order:

12 **DISCIPLINARY ORDER**

13 IT IS HEREBY ORDERED that Original Pharmacy Permit Number No. PHY 30196
14 issued to Respondent FALAH H. KHALIFA, Individual License Owner, to do business as
15 CALIFA PHARMACY is REVOKED.

16 IT IS HEREBY FURTHER ORDERED that Pharmacist License Number RPH 31694
17 issued to Respondent FALAH H. KHALIFA is revoked. However, the revocation on
18 Pharmacist License Number RPH 31694 is stayed and Respondent FALAH H. KHALIFA is
19 placed on probation for three (3) years on the following terms and conditions.

20 1. **Actual Suspension - Pharmacist.** Pharmacist License Number RPH
21 31694, issued to Respondent FALAH H. KHALIFA is suspended for a period of one-hundred
22 and twenty (120) days.

23 During suspension, Respondent KHALIFA shall not enter any pharmacy area or
24 any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any
25 other distributor of drugs which is licensed by the Board, or any manufacturer, or where
26 dangerous drugs and devices or controlled substances are maintained. Respondent KHALIFA
27 shall not practice pharmacy nor do any act involving drug selection, selection of stock,
28 manufacturing, compounding, dispensing or patient consultation; nor shall Respondent

1 KHALIFA manage, administer, or be a consultant to any licensee of the Board, or have access to
2 or control the ordering, manufacturing or dispensing of dangerous drugs and devices or
3 controlled substances.

4 Respondent KHALIFA shall not engage in any activity that requires the
5 professional judgment of a pharmacist. Respondent KHALIFA shall not direct or control any
6 aspect of the practice of pharmacy. Respondent KHALIFA shall not perform the duties of a
7 pharmacy technician or an exemptee for any entity licensed by the Board.

8 2. **Obey All Laws.** Respondent KHALIFA shall obey all state and federal laws and
9 regulations substantially related to or governing the practice of pharmacy.

10 Respondent KHALIFA shall report any of the following occurrences to the Board, in
11 writing, within 72 hours of such occurrence:

- 12 • an arrest or issuance of a criminal complaint for violation of any provision of the
13 Pharmacy Law, state and federal food and drug laws, or state and federal
14 controlled substances laws
- 15 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to
16 any criminal complaint, information or indictment
- 17 • a conviction of any crime
- 18 • discipline, citation, or other administrative action filed by any state and federal
19 agency which involves Respondent KHALIFA's license or which is related to
20 the practice of pharmacy or the manufacturing, obtaining, handling or
21 distribution or billing or charging for any drug, device or controlled substance.

22 3. **Reporting to the Board.** Respondent KHALIFA shall report to the
23 Board quarterly. The report shall be made either in person or in writing, as directed.
24 Respondent KHALIFA shall state under penalty of perjury whether there has been compliance
25 with all the terms and conditions of probation. If the final probation report is **not** made as
26 directed, probation shall be extended automatically until such time as the final report is made
27 and accepted by the Board.

28 4. **Interview with the Board.** Upon receipt of reasonable notice,

1 Respondent KHALIFA shall appear in person for interviews with the Board upon request at
2 various intervals at a location to be determined by the Board. Failure to appear for a
3 scheduled interview without prior notification to Board staff shall be considered a violation of
4 probation.

5 **5. Cooperation with Board Staff.** Respondent KHALIFA shall
6 cooperate with the Board's inspectional program and in the Board's monitoring and
7 investigation of Respondent KHALIFA's compliance with the terms and conditions of his
8 probation. Failure to comply shall be considered a violation of probation.

9 **6. Continuing Education.** Respondent KHALIFA shall provide evidence
10 of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

11 **7. Notice to Employers.** Respondent KHALIFA shall notify all present
12 and prospective employers of the decision in case number 2288 and the terms, conditions and
13 restrictions imposed on Respondent KHALIFA by the decision. Within 30 days of the
14 effective date of this decision, and within 15 days of Respondent KHALIFA undertaking new
15 employment, Respondent KHALIFA shall cause his direct supervisor, pharmacist-in-charge
16 and/or owner to report to the Board in writing acknowledging the employer has read the
17 decision in case number 2288.

18 If Respondent KHALIFA works for or is employed by or through a pharmacy
19 employment service, Respondent KHALIFA must notify the direct supervisor, pharmacist-in-
20 charge, and/or owner at every pharmacy of the and terms conditions of the decision in case
21 number 2288 in advance of the Respondent KHALIFA commencing work at each pharmacy.

22 "Employment" within the meaning of this provision shall include any full-time, part-
23 time, temporary, relief or pharmacy management service as a pharmacist, whether the
24 Respondent KHALIFA is considered an employee or independent contractor.

25 **8. No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
26 **Charge (PIC), or Serving as a Consultant.** Respondent KHALIFA shall not supervise any
27 intern pharmacist or perform any of the duties of a preceptor, nor shall Respondent KHALIFA
28 be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in

1 this order.

2 9. **Reimbursement of Board Costs.** Respondent KHALIFA shall pay to
3 the Board its costs of investigation and prosecution in the amount of \$15,000.00. Respondent
4 KHALIFA shall make said payments as follows: Said payments shall be made in equal
5 monthly installments over the three year period of probation with the final payment being
6 made to the Board no later than 90 days prior to the completion of the three (3) year
7 probationary term.

8 The filing of bankruptcy by Respondent KHALIFA shall not relieve
9 Respondent KHALIFA of his responsibility to reimburse the Board its costs of investigation
10 and prosecution.

11 10. **Probation Monitoring Costs.** Respondent KHALIFA shall pay the
12 costs associated with probation monitoring as determined by the Board each and every year of
13 probation. Such costs shall be payable to the Board at the end of each year of probation.
14 Failure to pay such costs shall be considered a violation of probation.

15 11. **Status of License.** Respondent KHALIFA shall, at all times while on
16 probation, maintain an active current license with the Board, including any period during
17 which suspension or probation is tolled.

18 If Respondent KHALIFA's license expires or is cancelled by operation of law
19 or otherwise, upon renewal or reapplication, Respondent KHALIFA's license shall be subject
20 to all terms and conditions of this probation not previously satisfied.

21 12. **License Surrender while on Probation/Suspension.** Following the effective
22 date of this decision, should Respondent KHALIFA cease practice due to retirement or health,
23 or be otherwise unable to satisfy the terms and conditions of probation, Respondent
24 KHALIFA may tender his license to the Board for surrender. The Board shall have the
25 discretion whether to grant the request for surrender or take any other action it deems
26 appropriate and reasonable. Upon formal acceptance of the surrender of the license,
27 Respondent KHALIFA will no longer be subject to the terms and conditions of probation.

28 Upon acceptance of the surrender, Respondent KHALIFA shall relinquish his

1 pocket license to the Board within 10 days of notification by the Board that the surrender is
2 accepted. Respondent KHALIFA may not reapply for any license from the Board for three
3 years from the effective date of the surrender. Respondent KHALIFA shall meet all
4 requirements applicable to the license sought as of the date the application for that license is
5 submitted to the Board.

6 **13. Notification of Employment/Mailing Address Change.** Respondent
7 KHALIFA shall notify the Board in writing within 10 days of any change of employment.
8 Said notification shall include the reasons for leaving and/or the address of the new employer,
9 supervisor or owner and work schedule if known. Respondent KHALIFA shall notify the
10 Board in writing within 10 days of a change in name, mailing address or phone number.

11 **14. Tolling of Probation.** Respondent must notify the board in writing
12 within 10 days of cessation of the practice of pharmacy or the resumption of the practice of
13 pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is
14 a violation of probation for respondent's probation to remain tolled pursuant to the provisions
15 of this condition for a period exceeding three years.

16 "Cessation of practice" means any period of time exceeding 30 days in which
17 respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the
18 Business and Professions Code.

19 During Respondent's final year of probation, Respondent shall work at least 20 hours
20 in each calendar month as a pharmacist and at least an average of 40 hours per month in any
21 six consecutive months. Failure to do so will be a violation of probation. If Respondent has
22 not complied with this condition during the probationary term, and Respondent has presented
23 sufficient documentation of his or her good faith efforts to comply with this condition, and if
24 no other conditions have been violated, the board, in its discretion, may grant an extension of
25 Respondent's probation period up to one year without further hearing in order to comply with
26 this condition.

27 **15. Violation of Probation.** If Respondent KHALIFA violates probation in any
28 respect, the Board, after giving Respondent KHALIFA notice and an opportunity to be heard,

1 may revoke probation and carry out the disciplinary order which was stayed. If a petition to
2 revoke probation or an accusation is filed against Respondent KHALIFA during probation, the
3 Board shall have continuing jurisdiction and the period of probation shall be extended, until
4 the petition to revoke probation or accusation is heard and decided.

5 If Respondent KHALIFA has not complied with any term or condition of
6 probation, the Board shall have continuing jurisdiction over Respondent KHALIFA, and
7 probation shall automatically be extended until all terms and conditions have been satisfied or
8 the Board has taken other action as deemed appropriate to treat the failure to comply as a
9 violation of probation, to terminate probation, and to impose the penalty which was stayed.

10 16. **Completion of Probation.** Upon successful completion of probation,
11 Respondent KHALIFA's license will be fully restored.

12 17. **Supervised Practice.** Respondent KHALIFA shall practice only under
13 the supervision of a pharmacist not on probation with the Board. Respondent KHALIFA shall
14 not practice until the supervisor is approved by the Board. The supervision shall be, as
15 required by the Board:

16 Substantial - At least 50% of a work week

17 Within 30 days of the effective date of this decision, Respondent KHALIFA shall have
18 his supervisor submit notification to the Board in writing stating the supervisor has read the
19 decision in case number 2288 and is familiar with the level of supervision as determined by
20 the Board.

21 If Respondent KHALIFA changes employment, Respondent KHALIFA shall
22 have his new supervisor, within 15 days after employment commences, submit notification to
23 the Board in writing stating the direct supervisor and pharmacist-in-charge have read the
24 decision in case number 2288 and is familiar with the level of supervision as determined by
25 the Board.

26 Within 10 days of leaving employment, Respondent KHALIFA shall notify the Board
27 in writing. Respondent KHALIFA's level of supervision shall be reevaluated by the Board
28 after the completion of one year of probation to determine whether or not a lower level of

1 supervision is appropriate.

2 18. **No Ownership of Premises.** Respondent KHALIFA shall not own,
3 have any legal or beneficial interest in, or serve as a manager, administrator, member, officer,
4 director, associate, or partner of any business, firm, partnership, or corporation currently or
5 hereinafter licensed by the Board. Respondent KHALIFA shall sell or transfer any legal or
6 beneficial interest in any entity licensed by the Board within 90 days following the effective
7 date of this decision and shall immediately thereafter provide written proof thereof to the
8 Board.

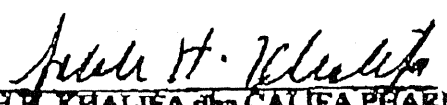
9 19. **Tolling of Suspension.** If Respondent KHALIFA leaves California to reside
10 or practice outside this state, for any period exceeding 10 days (including vacation),
11 Respondent KHALIFA must notify the Board in writing of the dates of departure and return.
12 Periods of residency or practice outside the state - or any absence exceeding a period of 10
13 days shall not apply to the reduction of the suspension period.

14 Respondent KHALIFA shall not practice pharmacy upon returning to this state
15 until notified by the Board that the period of suspension has been completed.

16 **ACCEPTANCE**

17 I have carefully read the above Stipulated Settlement and Disciplinary Order
18 and have fully discussed it with my attorney, Ronald S. Marks. I understand the stipulation
19 and the effect it will have on my Original Pharmacy Permit Number No. PHY 30196. I enter
20 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
21 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

22 DATED: 12/20/02

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24 
25 **FALAH H. KHALIFA dba CALIFA PHARMACY**
Respondent

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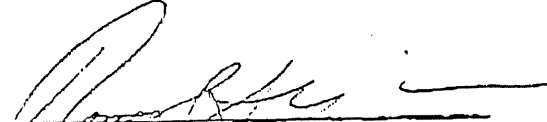
1 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
2 fully discussed it with my attorney, Ronald S. Marks. I understand the stipulation and the
3 effect it will have on my Pharmacist License Number RPH 31694. I enter into this Stipulated
4 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
5 bound by the Decision and Order of the Board of Pharmacy.

6 DATED: 12/20/02

7
8 
9 FALAH H. KHALIFA
Respondent

10
11 I have read and fully discussed with Respondents FALAH H. KHALIFA and FALAH
12 KHALIFA dba CALIFA PHARMACY the terms and conditions and other matters contained
13 in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

14 DATED: 12/20/02

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16 
17 RONALD S. MARKS
Attorney for Respondent

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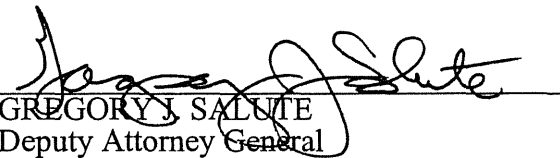
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1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby
3 respectfully submitted for consideration by the Board of Pharmacy of the Department of
4 Consumer Affairs.

5 DATED: 12/28/02

6 BILL LOCKYER, Attorney General
of the State of California

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8 
9 GREGORY J. SALUTE
Deputy Attorney General

10 Attorneys for Complainant

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12 DOJ Docket Number: 03585110-LA2000AD0541
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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

FALAH H. KHALIFA,
dba CALIFA PHARMACY
1133 Celis Street
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FALAH H. KHALIFA, Owner
and Pharmacist-in-Charge

Original Pharmacy Permit No. PHY 30196

and

FALAH H. KHALIFA
1133 Celis Street
San Fernando, CA 91340

Original Pharmacist License No. RPH
31694

Respondents.

Case No. 2288

OAH No. L2002030117

DECISION AND ORDER

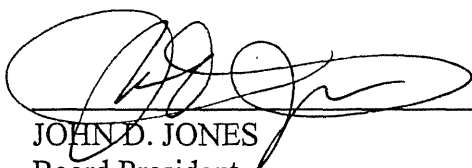
The attached Stipulated Settlement and Disciplinary Order is hereby adopted
by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 26, 2003.

It is so ORDERED January 27, 2003.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


JOHN D. JONES
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 GREGORY J. SALUTE, State Bar No. 164015
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 897-2520
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

Case No. 2288

12 FALAH H. KHALIFA,
dba CALIFA PHARMACY
13 1133 Celis Street
San Fernando, CA 91340
14 FALAH H. KHALIFA, Owner
and Pharmacist-in-Charge

A C C U S A T I O N

15 Original Pharmacy Permit No. PHY 30196

16 and

17 FALAH H. KHALIFA
18 1133 Celis Street
San Fernando, CA 91340

19 Original Pharmacist License No. RPH 31694

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

24 1. Patricia F. Harris ("Complainant") brings this accusation solely in her
25 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
26 Affairs.

27 2. On or about September 1, 1983, the Board of Pharmacy issued Original
28 Pharmacy Permit Number PHY 30196 to FALAH H. KHALIFA, Individual License Owner, to

1 do business as CALIFA PHARMACY ("Respondent CALIFA PHARMACY"). The Original
2 Pharmacy Permit Number was in full force and effect at all times relevant to the charges brought
3 herein and will expire on August,1, 2002, unless renewed.

4 3. On or about December 19, 1977, the Board of Pharmacy issued Original
5 Pharmacist License Number RPH 31694 to FALAH H. KHALIFA ("Respondent KHALIFA").
6 The Original Pharmacist License Number was in full force and effect at all times relevant to the
7 charges brought herein and will expire on April 30, 2002, unless renewed.

8 JURISDICTION

9 4. This Accusation is brought before the Board of Pharmacy ("Board"),
10 under the authority of the following sections of the Business and Professions Code ("Code").

11 5. Business and Professions Code Section 118(b) provides that the
12 suspension, expiration, or forfeiture by operation of law of a certificate does not deprive the
13 Board of authority or jurisdiction to institute or continue with disciplinary action against the
14 certificate or to order suspension or revocation of the certificate, during the period within which
15 the certificate may be renewed, restored, reissued or reinstated.

16 6. Section 4300 of the Code permits the Board to take disciplinary action to
17 suspend or revoke a license.

18 7. Section 4301 of the Code states:

19 The Board shall take action against any holder of a license who is guilty of
20 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
21 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
22 following:

23 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
24 deceit, or corruption, whether the act is committed in the course of relations as a licensee
25 or otherwise, and whether the act is a felony or misdemeanor or not.

26 (j) The violation of any of the statutes of this state or of the United States
27 regulating controlled substances and dangerous drugs.

28 (m) The cash compromise of a charge of violation of Chapter 13 (commencing

1 with Section 801) of Title 21 of the United States Code regulating controlled substances.

2 The record of the compromise is conclusive evidence of unprofessional conduct.

3 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
4 abetting the violation of or conspiring to violate any provision or term of Chapter 9
5 (commencing with Section 4000) of the Business and Professions Code or of the
6 applicable federal and state laws and regulations governing pharmacy, including
7 regulations established by the board.

8 (p) Actions or conduct that would have warranted denial of a license.

9 6. **CONTROLLED SUBSTANCE**

10 A. "Atridol" is a dangerous drug manufactured in Mexico. It is a
11 combination of Indomethacin, Methocarbamol and Bethamethasone and is not authorized for use
12 in the United States.

13 B. "Cyclobenzaprine" is a trade name for Flexeril, which is designated by
14 Business and Professions Code 4022 as a dangerous drug.

15 C. "Lodine" is a trade name for Estodolac, which is designated by Business
16 and Professions Code 4022 as a dangerous drug.

17 D. "Miltrate 10" is a combination of Meprobamate and Peritrate, which has
18 been discontinued by the manufacturer and is designated by Health and Safety Code section
19 11057(d)(15) as a Schedule IV controlled substance and by Business and Professions Code 4022
20 as a dangerous drug.

21 E. "Vicodin" is a trade name for Hydrocodone 5mg and Acetaminophen
22 500mg, which is designated by Health and Safety Code section 11055(j) as a Schedule II
23 controlled substance and by Business and Professions Code 4022 as a dangerous drug.

24 F. "Vicodin" is a trade name for Hydrocodone 7.5mg and Acetaminophen
25 750mg, which is designated by Health and Safety Code section 11055(j) as a Schedule II
26 controlled substance and by Business and Professions Code 4022 as a dangerous drug.

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1 G. “Phentermine” is a trade name for Adipex P, Fastin, which is designated
2 by Health and Safety Code section 11057(f)(2) as a Schedule IV controlled substance and by
3 Business and Professions Code 4022 as a dangerous drug.

4 H. “Otilin eardrops” is a dangerous drug manufactured in Mexico. It is a
5 combination of Neomycin Sulfate, Tetracaine and Chlorbutanol and is not authorized for use in
6 the United States.

7 I. “Dispan Doble” is a dangerous drug manufactured in Mexico. It contains
8 Belladonna and is not authorized for use in the United States.

9 J. “Incremin” is an iron supplement manufactured in Mexico and is not
10 authorized for use in the United States.

11 K. “Lomotil” is a combination of diphenoxylate and atropine. It is a
12 Schedule V controlled substance and not authorized for use in the United States.

13 L. “Neomycin” is an ointment manufactured in Mexico and is not authorized
14 for use in the United States.

15 M. “Homatropine drops” is manufactured in Mexico and is not authorized for
16 use in the United States.

17 N. “Bonadoxin” is manufactured in Mexico and is not authorized for use in
18 the United States.

19 O. “Lidocaine” is manufactured in Mexico and is not authorized for use in
20 the United States.

21 P. “Salsalate” is a trade name for Disalcid, which is designated by Business
22 and Professions Code 4022 as a dangerous drug.

23 6. Section 4059 of the Code states, in pertinent part, that no person shall
24 furnish any dangerous drug upon the prescription of a physician, dentist, podiatrist, optometrist,
25 or veterinarian. No person shall furnish any dangerous device, except upon the prescription of a
26 physician, dentist, podiatrist, optometrist, or veterinarian.

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1 7. Section 4081(a) of the Code states:

2 All records of manufacture and of sale, acquisition, or disposition of dangerous
3 drugs or dangerous devices shall be at all times during business hours open to inspection by
4 authorized officers of the law, and shall be preserved for at least three years from the date of
5 making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy,
6 medical device retailer, veterinary food-animal drug retailer, physician, dentist, podiatrist,
7 veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid
8 and unrevoked certificate, license, permit, registration, or exemption under Division 2
9 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing
10 with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of
11 dangerous drugs or dangerous devices.

12 8. Section 4332 of the Code provides that any person who fails, neglects, or
13 refuses to maintain the records required by Section 4081 or who, when called upon by an
14 authorized officer or a member of the Board, fails, neglects, or refuses to produce or provide the
15 records within a reasonable time, or who willfully produces or furnishes records that are false, is
16 guilty of a misdemeanor.

17 9. Section 4333 of the Code states, in pertinent part, that all prescriptions
18 filled by a pharmacy and all other records required by Section 4081 shall be maintained on the
19 premises and available for inspection by authorized officers of the law for a period of at least
20 three years. In cases where the pharmacy discontinues business, these records shall be
21 maintained in a board-licensed facility for at least three years.

22 10. Section 4342(a) of the Code states, in pertinent part, that the Board may
23 institute any action or actions necessary as may be provided by law and that, in its discretion, are
24 necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to
25 the standard tests as to quality strength, provided in the latest edition of the United States
26 Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food,
27 Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the
28 Health and Safety Code).

1 11. Title 16, California Code of Regulations, section 1717(a) states:
2 No medication shall be dispensed on prescription except in a new container which
3 conforms with standards established in the official compendia.

4 12. Title 16, California Code of Regulations, section 1718 states:
5 “Current Inventory” as used in Section 4232 of the Business and Professions
6 Code shall be considered to include complete accountability for all dangerous drugs handled by
7 every licensee enumerated in Section 4232. The controlled substances inventories required by
8 Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years
9 after the date of the inventory.

10 13. Section 125.3 of the Code states, in pertinent part, that the Board may
11 request the administrative law judge to direct a licensee found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
13 and enforcement of the case.

14 **FIRST CAUSE FOR DISCIPLINE**
15 **(FAILURE TO MAINTAIN RECORDS)**

16 14. Respondents CALIFA PHARMACY and KHALIFA are subject to
17 disciplinary action under sections 4300 and 4301, subdivisions (f), (j), (o), (m) and (p) of the
18 Code for unprofessional conduct for violating Code sections 4081(a), 4332, 4333, Title 16,
19 California Code of Regulations, section 1718, and Health and Safety Code section 111208, in
20 that Respondents failed to keep a complete, accurate and current inventory or complete
21 accountability of dangerous drugs by reason of the following:

22 a. On March 18, 1999, Inspector Venegas requested all the acquisition
23 records for May 30, 1997 to March 18, 1999. Respondent KHALIFA informed the Inspector that
24 these records were not on the premises. A request was made by the Inspector that Respondent
25 bring all the records back to the pharmacy within 72 hours and to call once available. The
26 Inspector issued a violation notice for unprofessional conduct.

27 b. On or about May, 1999, a review of records was conducted of the invoices
28 received from Respondents and that of the wholesalers, which revealed that Respondents failed

1 to provide 11 invoices. Respondents failed to account for 1500 Vicodin tablets, 500 Vicodin Es
2 tablets and 10,000 Phentermine 37.5. Additionally, inspectors conducted a Selected Drug Audit
3 Summary, using the May 30, 1997 DEA Biennial Inventory as a starting point, on Tylenol #3,
4 Vicodin, Vicodin ES and Didrex, which revealed that Respondents were short 8,585 tablets of
5 Tylenol #3, 6,376 tablets of Vicodin, and 264 tablets of Didrex.

6 c. On or about September 20, 1999, inspectors from the Board performed an
7 additional audit on Phentermine. Inspectors requested an inspection report of all acquisitions and
8 dispositions from May 30, 1997 to September 20, 1999, which was to include all purchases of
9 Adipex P, Fastin, Phentermine 37.5, Phentermine 30mg and all prescriptions filled during that
10 time period. Additionally, inspectors requested all sales to doctors, other pharmacies and
11 wholesalers, prescription documents from December 1, 1996, which would include the
12 prescription refills for said time period.

13 d. The September 20, 1999 audit revealed that Respondents had purchased
14 3000 capsules of Phentermine 30mg and returned 2000 and purchased 11,000 capsules of
15 Phentermine 37.5. Respondents failed to provide any invoices for the purchase of 3000 capsules
16 of Phentermine 30mg and invoices for 10,000 Phentermine 37.5. Additionally, inspectors
17 conducted a Selected Drug Audit Summary, using the May 30, 1997 DEA Biennial Inventory as
18 a starting point on Phentermine 30mg and Phentermine 37.5mg, which revealed that
19 Respondents were short 1,140 of Phentermine 30mg and 11,076 of Phentermine 37.5mg.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(DISPENSING WITHOUT A PRESCRIPTION)**

22 15. Respondents CALIFA PHARMACY and KHALIFA are subject to
23 disciplinary action under sections 4300 and 4301, subdivisions (f), (j), (o), and (p) of the Code
24 for unprofessional conduct for violating Code sections 4059, 4342(a), Health and Safety Code
25 section 11158 and Title 16, California Code of Regulations, section 1717(a) in that Respondents
26 dispensed dangerous drugs without a prescription by reason of the following:

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1 a. From on or about May 12, 1998 to on or about March 18, 1999, the Board
2 conducted an undercover operation for the purchase of dangerous drugs without a prescription
3 from Respondents.

4 b. The undercover operation revealed that on five separate visits, Respondents
5 sold dangerous drugs without a prescription to Inspector, Venegas as follows:

6 1. On or about May 12, 1998, Inspector Venegas went to CALIFA
7 PHARMACY and explained to Respondent that he needed ear drops for his child who had a
8 fever and an earache and that he also needed something for his back pain. Respondent gave him
9 some eardrops called "Otilin" and instructed him in the use of the medication. Respondents also
10 gave him a pink suspension in a "Prominicol Cough Syrup" bottle (generic for Triaminicol-OTC
11 medication). Respondent informed him that it was an antibiotic, penicillin and instructed him in
12 the proper storage. Additionally, he received some "Motrin" suspension for children.
13 Respondent then gave him some yellow tablets (scored and printed with 257/10) and said that
14 they were muscle relaxants and some white and green capsules called "Atridol," for pain.
15 Respondent then charged Inspector Venegas \$49.00 for the medication.

16 2. On or about May 19, 1998, Inspector Venegas returned to CALIFA
17 PHARMACY and asked Respondent for some stronger medication than "Atridol" that he gave
18 him last time. Respondent gave him some red and gray capsules in a white box and said that
19 they were for pain. The capsules were marked "Lodine 300". Respondent then charged
20 Inspector Venegas \$20.00 for the medication.

21 3. On or about August 24, 1998, Inspector Venegas returned to
22 CALIFA PHARMACY and asked for something for his pain. Respondent KHALIFA examined
23 him physically and asked him to extend his arms and questioned him on his physical being.
24 Respondent gave him a pack of Atridol and 6 round white tablets with "Dan" imprinted on one
25 side and the number "5658" on the other. Respondent placed the while tablets in an "Otilin" box.
26 Respondent then charged Inspector Venegas \$16.00 for the medication. The white tablets were
27 later identified as generic for Flexeril, a muscle relaxant.

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1 4. On or about October 19, 1998, Inspector Venegas returned to
2 CALIFA PHARMACY and asked Respondent for something for pain. Respondent KHALIFA
3 gave him some more Atridol and some white tablets with the name "Wallace" and "37" on top
4 and "5201" underneath and were placed in a "Quadriderm" box. Respondent then charged
5 Inspector Venegas \$17.00 for the medication and gave him instructions to lose weight and avoid
6 stress. The white tablets were later identified as Miltrate 10, which had been discontinued for
7 many years and is a Schedule IV controlled substance per Health and Safety Code section
8 11057(d)(15).

9 5. On March 18, 1999, Inspector Venegas returned to CALIFA
10 PHARMACY and asked Respondent for something for pain. Respondent KHALIFA gave the
11 Inspector some yellow tablets which had SL391 imprinted on them and put them in a
12 "Dermicort" box. Respondent then charged Inspector Venegas \$10.00 for the medication. The
13 yellow tablets were later identified as Salsalate, the generic for Disalcid, which is a dangerous
14 drug used in the treatment of arthritis.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(STORING DRUGS IN MISLABELED CONTAINERS)**

17 15. Respondents CALIFA PHARMACY and KHALIFA are subject to
18 disciplinary action under sections 4300 and 4301, subdivisions (f), (j), (o), and (p) of the Code
19 for unprofessional conduct for violating Code sections 4342(a), Health and Safety Code sections
20 111320 and 111255, and 21 U.S.C. 353 in that Respondents stored dangerous drugs in
21 mislabeled containers by reason of the following (see attached copy of Ex. "7"):

22 a. The Board conducted a physical inspection of the premises on March 18,
23 1999 and revealed that 125 containers contained dangerous drugs. The drugs were secured and
24 later summarized.

25 b. During the summary of the audit, items 7, 12, 18-21, 25, 27-29, 39, 41-43,
26 45-47, 49, 50, and 54 were dangerous drugs that were stored in containers of another product.

27 c. During the summary of the audit, items 2, 5, 10, 14, 15, 22, 23, 34-36, 38,
28 51-53, 56-59, 63, 4, 67, and 68 were dangerous drugs that were mis-labeled or not labeled at all.

1 d. During the summary of the audit, items 1, 17, 24, 31, 32, 37, 61, 62, 65,
2 and 66 were foreign drugs not authorized for use in the United States.

3 e. Item number 44 was Miltrate 10, expiration date of 5/87 was found in a
4 large box of expires drugs. This was the only bottle of Miltrate 10 in stock.

5 f. Items 35, 50, and 59 were samples of legend drugs that were in stock.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

9 1. Revoking or suspending Original Pharmacy Permit Number PHY 30196,
10 issued to FALAH H. KHALIFA, Individual License Owner, doing business as, CALIFA
11 PHARMACY.

12 2. Revoking or suspending Original Pharmacist License Number RPH
13 31694, issued to FALAH H. KHALIFA;

14 3. Ordering CALIFA PHARMACY and FALAH H. KHALIFA to pay the
15 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
16 pursuant to Business and Professions Code section 125.3;

17 4. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 1/17/02.

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21
22 P. J. Harris
23 PATRICIA F. HARRIS
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant